

In the Supreme Court of the State of Alaska

Richard L. Green,

Appellant,

v.

**State of Alaska, Department of
Health & Social Services, Office of
Children's Services, as legal custodian
of Un-named Children 1-4 and Office
of Public Advocacy, as guardian ad
litem of Un-named Children 1-4,**

Appellees.

Supreme Court No. **S-18062**

Order Regarding Appellant's Initial Motions

Date of Order: **May 27, 2021**

Trial Court Case Nos. **3PA-20-00568/569/570/571CI**

On May 13, 2021 this court issued an order clarifying that this is an appeal from a final judgment, a Long-Term Domestic Violence Protective Order entered against appellant Richard L. Green and in favor of his children in Superior Court Case Nos. 3PA-20-00568/569/570/571. The children currently are in the custody of the Office of Children's Services as a result of child-in-need-of-aid proceedings in different superior court matters. This court's order also noted that Mr. Green — self-represented — had filed a number of motions. More motions have since been filed, but this order is intended to resolve only the initial motions.

1. Preliminary Issues

With Mr. Green's opening papers he filed motions identified in the May 13 order. OCS filed a combined response to all motions. The children's Guardian Ad Litem joined in OCS's response. Mr. Green moved to strike the GAL's joinder as untimely, and he filed a reply to OCS's combined opposition. OCS moved to strike

Mr. Green's reply because he did not file a motion for leave to file the reply. Mr. Green then moved for leave to file his reply. **IT IS ORDERED** that the GAL's joinder in OCS's response to Mr. Green's motions is **ACCEPTED** as filed and that Mr. Green's motion for leave to file his reply is **GRANTED** and his reply is **ACCEPTED** as filed.

2. Motion To File Late Appeal

Mr. Green filed a motion for leave to late-file his appeal, apparently to cure any argument that his appeal was untimely. OCS, joined by the GAL, filed a conditional non-opposition, contending that the appeal was not filed late but that the appeal should be classified as an Appellate Rule 202/204 appeal rather than an Appellate Rule 218 expedited child custody appeal. Mr. Green filed a reply to OCS's conditional opposition. Whether Mr. Green's appeal will be expedited is discussed below in connection with other motions. **IT IS ORDERED** that Mr. Green's appeal is **ACCEPTED** as filed, whether it was timely or accepted as a late-filed appeal.

3. Motion To Appeal At Public Expense

Mr. Green filed a motion to waive the filing fee and cost bond, to allow him to file CDs of the electronic record instead of a transcript, to have the court system print his briefs, and to waive other routine costs. OCS, joined by the GAL, non-opposed this motion. **IT IS ORDERED** that Mr. Green's motion is **GRANTED**.

4. Motion To Proceed Self-Represented

Mr. Green filed a motion to allow him to proceed self-represented in this appeal until he receives conflict-free appointed counsel. Mr. Green was represented by the Public Defender Agency in the trial court because he was similarly represented in the

child-in-need-of-aid cases; he sought to have the trial court appoint different counsel to represent him on the grounds that: (1) his appointed public defender was providing ineffective assistance of counsel; (2) he objected to the proceedings on the ground of ineffective assistance of counsel; and (3) conflict-free counsel should be appointed to assist with his ineffective assistance of counsel claims. The Public Defender Agency has since filed documents and motions, some putatively on Mr. Green's behalf, in this appeal,¹ and Mr. Green has filed a separate motion for court-appointed, conflict-free counsel to represent him in this appeal. These matters will be addressed later. OCS, joined by the GAL, filed a conditional non-opposition to the self-representation motion, contending that Mr. Green has the right to self-representation, that there is no legal basis for court-appointed counsel in an appeal of a long-term domestic violence protective order, and that the Public Defender Agency must either withdraw as counsel in this appeal or Mr. Green must agree that a public defender may represent him in this appeal. Without prejudice to a future ruling on the Public Defender Agency's participation in this appeal or the need for a representation hearing for this appeal, **IT IS ORDERED** that Mr. Green's motion to proceed self-represented is **GRANTED**.

5. Motions Regarding Audio Files And Log Notes

Mr. Green filed a motion, with a request for expedited consideration, for all audio files and log notes so he can prepare his appeal. Mr. Green's motion papers suggest he believes he needs the materials to perfect his appeal; OCS, joined by the GAL, did not oppose the request for audio files and log notes but did oppose any type

¹ Cf. Appellate Rule 517.1 (regarding presumptive role of trial court counsel in appeal).

of expedited consideration. The Public Defender Agency has since filed documents and motions in this appeal, some putatively on Mr. Green's behalf, including a designation of the electronic record for this appeal. **IT IS ORDERED** that Mr. Green's motion is **GRANTED IN PART**, as follows. The underlying superior court log notes will, in the normal course, be made part of the record for the appeal. When the record is complete, the Clerk of Court shall provide Mr. Green with an electronic copy of the record, either by email or by CD. The Clerk of Court also shall, in the normal course, give Mr. Green CDs of the electronic record that Mr. Green and the Public Defender Agency designated in their filings. If Mr. Green believes the electronic record designation is incomplete, he may file a supplemental designation of the electronic record compiled in the underlying matter.

6. Motions For Immediate Ruling And Expedited Consideration

Mr. Green filed a "motion for immediate ruling" and a "motion for expedited consideration." Mr. Green appears to be under the mistaken impression that this court might rule on the merits of an appeal based on motion practice, without briefing in compliance with the appellate rules. OCS, joined by the GAL, opposes expediting this appeal in any way, arguing that it is not a child custody matter that under Appellate Rule 218 might be expedited. OCS is correct that an appeal from a long-term domestic violence protective order generally is not an expedited matter and that, as clarified in our May 13 order, Mr. Green's efforts to obtain this court's review of the related child custody rulings must be made through the petition for review in Supreme Court No. S-18075. But Mr. Green raises a valid point that the protective order issued in the underlying matter could have some impact on the related child-in-need-of-aid

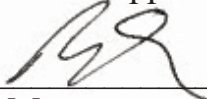
litigation in the superior court, even though the child custody ruling in those cases arises from the child protection statutes and even though this court might not grant Mr. Green's petition for review. **IT IS ORDERED** that this appeal shall from this point forward be considered an expedited matter, this appeal shall be governed by the expedited procedures of Appellate Rule 218, the Clerk of Court shall provide Mr. Green a copy of that rule, and Mr. Green shall become familiar with and comply with that rule.

7. Other Motions And Issues

Other pending motions will be resolved by future orders. However, we agree with OCS's statements in its motion papers that the parties to this appeal are Mr. Green, as the appellant, Mr. Green's four children, through their legal custodian OCS, and the Office of Public Advocacy, as guardian ad litem for the children. The Public Defender Agency is not a party to this appeal; its participation in this appeal will be clarified in future orders. **THE PARTIES ARE DIRECTED** to use the caption and case number set forth above for future filings in this appeal. **THE PARTIES ARE DIRECTED** not to file papers in this appeal with a case caption combined with any other appellate case until such time as the court decides consolidation is appropriate.

Entered at the direction of an individual justice.

Clerk of the Appellate Courts



Ryan Montgomery-Sythe,
Chief Deputy Clerk

cc: Appellate Court Records Office

Green v. State of Alaska, et al.
Supreme Court No. S-18062
May 27, 2021 Initial Motions Order
Page 6

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